

Final-Exchange Stakeholder Involvement Council

Meeting Minutes

November 3, 2010

I. Call to order

- **Beki Brandborg** called to order the regular meeting of the **Exchange Stakeholder Involvement Council** at **1:00pm** on **November 3, 2010** in **St. Patrick's Hospital Convention Center in Missoula**.

II. Welcome by Commissioner Lindeen

- *In the 16 years I've been involved in politics, the day after an election is a time to reflect back – and look forward. There is always a change, and it's important to consider how it changes our landscape surrounding health care reform. When we awoke this morning, we might have asked "Could this election reflect and might it create a change in health care reform?" Congress will probably not make any major changes. There is always a chance that conversations will take place about changing health care reform, but the State Insurance Exchanges were not controversial. This idea first came from Republicans years ago, and for the most part Republicans and Democrats agree about its importance. The fact is we have a million dollar planning grant to launch the Exchange – and it can move forward.*
- *How do others on the Council perceive the election results and how it might affect our work?*
 - Gary MacLaren: *The future of health care reform is in doubt. The funding for it could be repealed in Congress, but not the law itself. Since we have the grant in hand, the Exchange is probable and we should proceed. This is a great time to continue our work.*
 - Mark Wakai: *Health Care Reform is very hard to argue; it's the right thing to do, the concepts are good. We have the funds to proceed for the benefit of Montanans. We should proceed. I support continuing.*
 - Laurie Francis: *This is an incredible opportunity—we have the money, we should forge a path for Montana.*
 - Kristin Page Nei: *The other thing is we have a diverse state. We have a track record of working together; We are innovative and all have the ability to provide better access for everyone. We are in this together, let's go.*
 - Dave Kendall: *I echo the other comments. Insure Montana is another model for working together. If we don't do something in Montana, the Federal Government will do it for us.*
 - Tim Warner: *We could not agree more that we should move forward.*
- *CSI Staff: Unless health care reform is completely repealed, there is a federal preemption that will be triggered. If we don't build our own state-based exchange, Health and Human Services will regulate it run the Exchange for us. There is a federal floor we will default to.*
- *Commissioner Lindeen: I am so glad you are supportive of our work moving forward.*

III. Review of Montana Health Insurance Exchange Authority Bill

CSI Staff: The comments received since our last meeting from Council members were taken quite seriously. In the feedback summary we are providing, the themes of your feedback are identified. Many of your comments will be addressed later in the development process, specifically through the Rules, Plan of Operations for the Exchange Authority, after the federal regulations are distributed, and in the 2013 legislative session – and not in the bill. Those details will come as we shape the Exchange. Right now we are creating the framework for the Exchange Authority, the skeleton, a body that can make decisions. Additional comments by Council members may be emailed to the Insurance Commission staff

SECTION 1. Establishing the Exchange Authority

- *CSI: Is there enough clarity—we intended there to be clear lines of authority. Staff works for the authority. Commissioner has oversight authority only. Stakeholders had no comments.*
- *Stakeholder Question: Is it necessary to codify that the Exchange is not outside the normal system of governmental checks and balances, which includes the courts?*
 - *CSI: No, it is not necessary to codify that.*

SECTION 2. Definitions

- *CSI: Has the bill correctly defined “small group” as up to 100 employees? We have the option of changing this to 1 to 100 employees in 2014, but we must have it be 100 by 2016. Or we could keep the number at 2-50 until 2016. Small employer definition in insurance code can change in 2013.*
 - *Amanda Harrow: If the numbers dropped to 1 to 50, could the lowest number remain 1?*
 - *CSI: Yes, there can be an employer with one employee or a spouse. We can follow the federal definition.*
 - *David Kendall: What is our flexibility?*
 - *Staff: It’s not an issue we have fully explored yet. Once we get into the definition of small employee group they are in the same risk pool.*
 - *David Kendall: The other point is what is the demand? Perhaps we need to examine market interest.*
 - *Amanda Harrow: Strongly supports the need to attract a large group.*
 - *Tanya Ask: Shouldn’t we start small since those businesses have the most trouble getting insurance? The greatest need should have first access.*
 - *Todd Lovshin: Supports Tanya’s comment, this is a large employer in the state. We should start with the smaller market and bring the others in over time.*
 - *Kathy Burton: The disadvantage is there is nowhere to expand to if we start with 100. What do you expand to if we have them all in initially and all at once with no new insurers to draw from.*
 - *Angela Dowling: Bringing in a larger pool can disrupt and hurt sustainability. We should be cautious; There is potential for disproportional risk transfer.*
 - *David Kendall: Is there some other way to deal with the risk transfer?*
- *Stakeholder : Should we delete the definition of “educated health care consumer” as being too rigid to allow for participation of Montanans who could bring expertise from the consumer perspective?*
 - *Commissioner Lindeen: We agree, delete it.*

SECTION 3. Board Appointments

- Stakeholder: *Are actuaries too scarce in Montana? Should this be stated as a preference rather than a requirement?*
 - CSI: *It is a limited pool. We will look at a better way to include these skills.*
- Stakeholder: *Should we revise section (1)(a) to say that “one of whom must be a representative of the small business community” or “a representative of the business community eligible to purchase from the Exchange?”*
 - CSI: *Yes.*
- CSI: *Should the bill identify other appointing authorities in addition to the Governor and the Commissioner? The interim Legislative Finance Committee?*
 - Chuck Hunter: *Consider a liaison appointment from the Legislative Finance Committee, a non-voting member versus a Board member. Allow them to offer comments and input.*
 - Gary MacLaren: *I agree.*
 - Commissioner Lindeen: *The suggestion I had was to look at what would be the most fair. The Legislative Finance Committee is a year-round standing committee and includes equal numbers of Republicans and Democrats. Another option is to ask the Legislative leadership to appoint a member.*
 - Chuck Hunter: *Or consider the Economic Affairs Committee because they oversee insurance.*
 - Diane Fladmo: *I hope one member can represent workers, consumers and employees.*
- Stakeholder: *Should the bill be more inclusive with consumer representatives and add “with significant experience in health care financing or health care access issues?”*
 - CSI: *We agree.*
 - Kristina Hubbard: *We support expansion of that definition. Advocacy and experience with access is important.*
 - Laurie Francis: *It’s a great idea and there is a large pool to draw from including folks from community health centers.*
 - Kim Abbott: *I support Laurie’s comment of including people who understand community health centers. It’s a great idea. This will be pretty difficult stuff; we need to make sure there’s experience.*
 - Todd Lovshin: *The discussions may be too complex. While consumers are the ones buying it, they need extensive health insurance knowledge to do so. Perhaps it could be a business consumer.*
- Commissioner Lindeen: *Is seven the right number of members or should it be larger?*
 - Chuck Hunter: *Seven to nine is reasonable.*
 - Todd Lovshin: *What is the thinking behind the appointment of a state health plan person? They can’t buy through the exchange.*
 - CSI: *They have expertise on pay for performance and solid knowledge about how to manage risk.*
 - David Kendall: *The Exchange is not like Insure Montana— Insurers will bring their plans to the exchange for sale.*
 - Kathy Burton: *Does the Board need to study risk?*
 - CSI: *The federal regulations say it has to operate with a risk adjustment mechanism. All the plans have to be certified by the Exchange Authority. Insure Montana is not a self-insurer. Also, they need to monitor rates inside the exchange, to keep them down.*
- Regarding the conflict of interest issue:

- Janet Whitmoyer: *I am concerned with excluding health care providers. You could get a perspective on many impacts and settings where the care is taking place resulting in a stronger plan and pool.*
- Gary MacLaren: *I'm in favor of the current list. There still needs to be a mechanism for input from providers and consumers; this can take place by the Advisory Council.*
- Laurie Francis: *I would hate to have decisions made without at least one primary care provider.*
- Mark Wakai: *I agree with that. The provider brings a whole different experience; it has a lot of merit.*
- Amanda Harrow: *There is an important need for stakeholders to have input. Perhaps make the relationships between the Advisors and the Board more clear.*

SECTION 4. No Comments

SECTION 5. Powers and Duties of the Commissioner

- CSI: *Should the bill ask for an independent audit by a private accounting firm, rather than, or in addition to a CSI audit ?It might be both a performance audit regarding board duties, staff efficacy, responses to complaints, etc. in addition to a financial audit. CSI has criminal justice authority.*
 - Gary MacLaren: *The Legislative Committee could do this; they do so regularly for others Comments:*
 - Chuck Hunter: *I agree; performance audits need to be included.*
 - Tanya Ask: *A third party audit makes sense; it does provide impartiality. There would be better separation by having an outside audit.*

SECTION 6. General Requirements for the Exchange Authority

- CSI: *Is the bill clear about the distinctions between the SHOP Exchange and the Individual Exchange in this section? Is a carrier required to offer in both?*
 - Amanda Harrow: *Will there be two Exchanges or one with two separate markets?*
 - CSI: *No, one authority with two Exchanges. We will make it clearer.*
 - Stakeholder: *Does the bill need to clarify what entities are eligible for contracting for various services and what makes them eligible; whether there will be a state procurement process with an RFP?*
 - CSI: *Not a state agency, so not necessarily a state procurement process.*
 - Stakeholder: *Would a subsidiary of a health insurer qualify as an eligible entity for the purpose of contracting?*
 - CSI: *No, the ACA does not allow contracting with affiliates of health insurers.*
 - Stakeholder: *We believe there should be a stated preference for use of public employees to carry out certain Exchange duties.*
 - CSI: *That may not always be necessary. Sometimes, yes, i.e., Medicaid eligibility.*
 - Stakeholder: *Perhaps the section should be written only to specify who is not an eligible entity.*
 - Stakeholder: *Does the bill need to clarify those current Montana regulations prohibiting discrimination in health insurance would be protected under Section 6(7)?*
 - CSI: *No, additional language is probably not necessary.*
 - Stakeholder: *Does the bill need to make any statements that allow or disallow the*

sale of insurance without state mandates?

- CSI: *We do not see state mandates that go beyond the essential benefits at this time. The bill addresses that issue to the extent possible. There is no state funding for the Exchange.*

SECTION 7. Powers and Duties of the Board

- CSI: *Comments were extensive and detailed in this section. Of course, this is a critical section and we understand this. All of the board's duties will be further refined as we go forward; this is just the skeleton framework. Most comments will need to wait for federal guidance—that's why we need rule-making authority. Some can be addressed in the research, the exchange plan of operation, or subsequent legislation.*
- Angela Dowling: *Will the definition of agents be part of the Board's responsibility? Is that the intent – or will we leave this for now?*
 - CSI: *It's premature for this bill to address the role of producers and navigators. Discussion needs to happen between agents and insurance company.*
 - Gary MacLaren: *I'd leave as is—looser is better.*
 - David Kendall: *Narrators will be important. We have lots of associations in Montana. There should be good synergy.*
 - Kristen Page Nei: *Should this idea go into a required report?*
- *Does the bill need to clarify that the Board means the Exchange Authority and includes staff?*
 - CSI: *The Board is the Exchange Authority.*
- *Does the bill need more requirements for certification of plans?*
 - CSI: *The bill is adequate at this point in time. Federal regulations will further refine later.*
- *Should the bill say more about the rating of plans?*
 - CSI: *It is too early to decide, we must wait for federal regulations.*
- *Should the bill include more strategies for easing administrative burden for employers?*
 - Amanda Harrow: *This is really key – that is work well for small businesses. Having multiple insurers to interact with would be an administrative burden; instead we need a clearinghouse to work with.*
 - CSI: *See the points on Page 19 of the bill, (cc), (dd) and (ee). I understand your concern. Having six employees with six insurers would be a burden; they will be able to use one insurer through the Exchange.*
- *There is a concern about the ACAs emphasis on web-based access and lack of high speed access in rural areas? Does it need to be addressed in this bill, or can it be addressed in the rules?*
 - Kristina Hubbard: *Specifically require off-line processes for those without internet access*
- Amanda Harrow: *Coverage for youth under Age 19 is important. Should the bill offer strategies to make that happen instead of just assigning this to the authority?*

SECTION 8. Health Plan Certification.

- CSI: *We have identified all that we know about plan certification. We expect more information in the federal regulations, so more detail at this point is probably premature. The idea of an “active purchaser” will develop or not as the exchange proceeds*
- Stakeholder: *Does the bill need to mention catastrophic plans in this section?*
 - CSI: *Yes, we will add clarification.*

SECTION 9: Establishing an Advisory Committee

- Should the bill create a requirement that the Advisory Committee meet on a regular schedule?
 - CSI: *We could put this requirement in the Rules. Right now it says the Committee will meet when the Board or Commissioner decides it is appropriate.*
 - Chuck Hunter: *I suggest at least once a year and a way to ensure the Board is taking their advice.*
 - David Kendall: *Quarterly at least and at least once before a decision on accepting bids is made. Require the Exchange Board to hear the Advisory Council before important choices are made.*
 - Kim Abbott: *I agree. If we're counting on that diversity in the Advisory Council and the sharing of information, we need to ensure it and require it.*
 - Laurie Frances: *I agree with the last two points. The more expansive the role of the Advisory Board, the better.*
 - *There should be a minimum named here. Probably early on they will meet more frequently, and as they maintain the program, input needs to be assured over time.*

SECTION 10. Funding for the Exchange Authority

- CSI: *There were very few comments on this Section. There is no state funding involved. But, as required by federal law by 2015, State Exchanges must be self-sustaining. In 2014 the MCHA assessments go away. There will be a different assessment to run the exchange..*
 - Gary MacLaren: *Are you assuming the current MCHA will transfer over and apply to these?*
 - CSI: *No. This is a different animal. The risk pool will go away. The high risk pool is there to take people who are rejected by insurance companies. If the law changes, that will have to change too. Insurance companies will be assessed by the exchange authority. The Commissioner must approve the amount. It will be the minimum amount to support the program. All health insurers in the market will be assessed.*

SECTION 11. Required Reports

- Stakeholder: *Should the bill require a report on adverse selection in the annual report in addition to the 2012 report?*
 - CSI: *Yes, we could add that.*
 - Kristin Page Nei: *I think that is a great suggestion.*
- Stakeholder: *Should the bill expand the 2012 report to examine how the Exchange can most effectively interface with the administration of Medicaid and other public programs?*
 - CSI: *Yes.*

SECTION 12. Defined Contribution Plan Inside the Exchange

- Stakeholder: *Is there a federal requirement for establishing a defined contribution program in the Exchange?*
 - CSI: *Not per se. It's an ACA requirement that employees get to choose within a*

- tier. A flat fee approach may be possible, as suggested by one commenter.*
- David Kendall: *I know this is how Connecticut's Exchange works. When you get a price as an employee, the cost per person is the same. The more we can get business practices streamlined today, the better; it is pretty complicated and could be part of the study.*
 - CSI: *We could take out the percentage language, and leave the contribution issue to be decided by the exchange later.*
 - Amanda Harrow: *I support that because of budgeting challenges experienced by employers.*
 - Tanya Ask: *I think there is a way of doing what David is referencing, like Utah does with a flat fee. It includes part-time employees and allows them to purchase coverage. The flexibility is important.*
 - CSI: *We might have to require composite rating.*
 - CSI: *Regarding the need for flexibility, what do you think about the defined contribution in the SHOP Exchange, to ensure we have employers to join?*
 - Todd Lovshin: *It should be at the insurers' option, it's their risk. The assumption is all employees are in it, but the insurer – since it is their risk – should have the option.*
 - Amanda Harrow: *But, it's the employer's money; they need to have the choice. Will everyone be in the same risk pool?*
 - Staff: *All of the small group business (inside and outside) is in that small group market pool. It's all in the same bucket; the same risk pool.*

SECTION 13. Health Plan Requirements Inside and Outside the Exchange

- CSI: *Has the bill done enough to limit the opportunity for adverse selection against the Exchange? Is the prohibition against offering bronze plans outside the Exchange unless a similar bronze plan is offered in the Exchange a reasonable way to address potential adverse selection? This just begins to address the issue. It will continue to be researched. Regarding point d. of the consumer comments asking for more restrictions on the market outside the exchange, and the suggestions we received, do we want to go to this level of specificity?*
 - Tanya Ask: *The risk adjustment may take care of this, but we don't know. We can adjust or add to this later. To the extent things are still being identified, it might be good for the study, versus in the bill. How they are flushed out by HHS will help.*
 - Kathy Burton: *The language is too specific at this point, may be too hard to offer the same exact benefit.*
 - Amanda: *Keep it generic. Allow it to happen. Let's not limit the market by defining it narrowly or with restrictions.*
 - Angela Dowling: *Needs to leave the more general language.*
 - Kim Abbott: *We like the language; keep it.*
 - Kristen Page Nei: *I agree with Kim. Given whom I represent the sickest of the sick. There really should be no outside market at all, this language is a compromise.*
 - Amanda Harrow and Laurie Frances: *We agree.*

- Kristin Page Nei: *Should we state that merging the individual and small group market should happen now and not be studied so that funds could be freed up to study more important things?*
 - CSI: *Merging does take some analysis, combining two very different markets. I do understand the pros. Research could also tell us the best ways to do it and ideas for transition.*
 - Kristin Page Nei: *That's the legislation I would like.*
 - Tanya Ask: *In the current market place, hundreds of employers are doing business in the large group market. The law says we have to maintain it. You may be limiting the small group market.*

IV. Public Comment

- Travis Hoffman of the Summit Independent Living Center: *Likes the “single point of entry” and “no wrong doors” with education for consumers.*
- Molly Moody: *Important to reiterate health care access language for consumer reps. Section 13 needs to more aggressively address adverse selection.*

V. Adjournment.

Notes submitted by: Office of the Commissioner of Securities and Insurance.